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MSBA/MASA Model Policy 416

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## **416 DRUG AND ALCOHOL TESTING**

### **I. PURPOSE**

- A. The Cannon Valley Special Education Cooperative recognizes the significant problems created by drug and alcohol use in society in general, and in the public schools in particular. The Cooperative further recognizes the important contribution that the public schools have in shaping the youth of today into the adults of tomorrow.
- B. The Cooperative board believes that a work environment free of drug and alcohol use will be not only safer, healthier, and more productive but also more conducive to effective learning. To provide such an environment, the purpose of this policy is to provide authority so that the Cooperative board may require all employees and/or job applicants to submit to drug and alcohol testing in accordance with the provisions of this policy and as provided in federal law and Minnesota Statutes, sections 181.950-181.957.

### **II. GENERAL STATEMENT OF POLICY**

- A. All Cooperative employees and job applicants whose positions require a commercial driver's license will be required to undergo drug and alcohol testing in accordance with federal law and the applicable provisions of this policy. The Cooperative also may request or require that drivers submit to drug and alcohol testing in accordance with the provisions of this policy and as provided in Minnesota Statutes, sections 181.950-181.957.
- B. The Cooperative may request or require that any Cooperative employee or job applicant, other than an employee or applicant whose position requires a commercial driver's license, submit to drug and alcohol testing in accordance with the provisions of this policy and as provided in Minnesota Statutes, sections 181.950-181.957.
- C. The use, possession, sale, purchase, transfer, or dispensing of any drugs not medically prescribed, including medical cannabis, whether or not it has been prescribed for the employee, and including non intoxicating cannabinoids or edible cannabinoid products, is prohibited on Cooperative property (which includes Cooperative vehicles), while operating Cooperative vehicles or equipment, and at any Cooperative-sponsored program or event. Use of drugs that are not medically prescribed, including medical cannabis, whether or not it has been prescribed for the employee, and including non intoxicating cannabinoids or edible cannabinoid products, is also prohibited throughout the school or work day, including lunch or other breaks, whether or not the employee is on or off Cooperative property. Employees under the influence of drugs that are not medically prescribed are prohibited from entering or remaining on Cooperative property.
- D. The use, possession, sale, purchase, transfer, or dispensing of alcohol is prohibited on Cooperative property (which includes Cooperative vehicles), while operating Cooperative vehicles or equipment, and at any school-sponsored program or event. Use of alcohol is also prohibited throughout the school or work day, including lunch or other breaks, whether or not the employee is on or off Cooperative property. Employees under the influence of alcohol are prohibited from entering or remaining on Cooperative property.
- E. Any employee who violates this section shall be subject to discipline that includes, but is not limited to, immediate suspension without pay and immediate discharge.

### **III. DRUG AND ALCOHOL TESTING FOR EMPLOYEES**

The Cooperative may request or require drug and alcohol testing for Cooperative employees or job applicants for such positions. The Cooperative does not have a legal duty to request or require any employee or job applicant to undergo drug and alcohol testing as authorized in this policy.

A. Circumstances Under Which Drug or Alcohol Testing May Be Requested or Required:

1. General Limitations

- a. The Cooperative will not request or require an employee or job applicant whose position does not require a commercial driver's license to undergo drug or alcohol testing, unless the testing is done pursuant to this drug and alcohol testing policy; and is conducted by a testing laboratory that meets one of the criteria listed in Minnesota Statutes, section 181.953, subdivision 1.
- b. The Cooperative will not request or require an employee or job applicant whose position does not require a commercial driver's license to undergo drug and alcohol testing on an arbitrary and capricious basis.

2. Job Applicant Testing

The Cooperative may request or require any job applicant whose position does not require a commercial driver's license to undergo drug and alcohol testing, provided a job offer has been made to the applicant and the same test is requested or required of all job applicants conditionally offered employment for that position. If a job applicant has received a job offer that is contingent on the applicant's passing drug and alcohol testing, The Cooperative may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test. In the event the job offer is subsequently withdrawn, The Cooperative shall notify the job applicant of the reason for its action.

3. Random Testing

The Cooperative may request or require employees to undergo drug and alcohol testing on a random selection basis only if they are employed in safety-sensitive positions.

4. Reasonable Suspicion Testing

The Cooperative may request or require any employee to undergo drug and alcohol testing if The Cooperative has a reasonable suspicion that the employee:

- a. is under the influence of drugs or alcohol;
- b. has violated The Cooperative's written work rules prohibiting the use, possession, sale, or transfer of drugs or alcohol while the employee is working or while the employee is on The Cooperative's premises or operating the Cooperative's vehicles, machinery, or equipment;
- c. has sustained a personal injury, as that term is defined in Minnesota Statutes, section 176.011, subdivision 16, or has caused another employee to sustain a personal injury; or
- d. has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.

5. Treatment Program Testing

The Cooperative may request or require any employee to undergo drug and alcohol testing if the employee has been referred by The Cooperative for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program under an employee benefit plan, in which case the employee may be requested or required to undergo drug and alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two (2) years following completion of any prescribed chemical dependency treatment program.

6. Routine Physical Examination Testing

The Cooperative may request or require any employee to undergo drug and alcohol testing as part of a routine physical examination provided the drug or alcohol test is requested or required no more than once annually and the employee has been given at least two weeks' written notice that a drug or alcohol test may be requested or required as part of the physical examination.

B. No Legal Duty to Test

The Cooperative does not have a legal duty to request or require any employee or job applicant whose position does not require a commercial driver's license to undergo drug and alcohol testing.

C. Definitions

1. "Drug" means a controlled substance as defined in Minnesota Statutes, including medical cannabis, regardless of enrollment in the state registry program.
2. "Drug and Alcohol Testing," "Drug or Alcohol Testing," and "Drug or Alcohol Test" mean analysis of a body component sample by a testing laboratory that meets one of the criteria listed in Minnesota Statutes, section 181.953, subdivision 1, for the purpose of measuring the presence or absence of drugs, alcohol, or their metabolites in the sample tested.
3. "Employees" means any persons, independent contractors, or persons working for an independent contractor who perform services for The Cooperative for compensation, either full time or part time, in whatever form, except for persons whose positions require a commercial driver's license, and includes both professional and nonprofessional personnel.
4. "Job Applicant" means a person, independent contractor, or person working for an independent contractor who applies to become an employee of The Cooperative in a position that does not require a commercial driver's license, and includes a person who has received a job offer made contingent on the person's passing drug or alcohol testing.
5. "Positive Test Result" means a finding of the presence of drugs, alcohol, or their metabolites in the sample tested in levels at or above the threshold detection levels contained in the standards of one of the programs listed in Minnesota Statutes, section 181.953, subdivision 1.
6. "Random Selection Basis" means a mechanism for selection of employees that:
  - a. results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected; and
  - b. does not give the Cooperative discretion to waive the selection of any employee selected under the mechanism.

7. "Reasonable Suspicion" means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.
8. "Safety-Sensitive Position" means a job, including any supervisory or management position, in which an impairment caused by drug or alcohol usage would threaten the health or safety of any person.

D. Right of Employee or Job Applicant to Refuse Drug and Alcohol Testing and Consequences of Such Refusal

1. Right of Employee or Job Applicant to Refuse Drug and Alcohol Testing

Any employee or job applicant whose position does not require a commercial driver's license has the right to refuse drug and alcohol testing subject to the provisions contained in Paragraphs 2. and 3. of Section III.D.

2. Consequences of an Employee's Refusal to Undergo Drug and Alcohol Testing

Any employee in a position that does not require a commercial driver's license who refuses to undergo drug and alcohol testing in the circumstances set out in the Random Testing, Reasonable Suspicion Testing, and Treatment Program Testing provisions of this policy may be subject to disciplinary action, up to and including immediate discharge.

3. Consequences of a Job Applicant's Refusal to Undergo Drug and Alcohol Testing

Any job applicant for a position which does not require a commercial driver's license who refuses to undergo drug and alcohol testing pursuant to the Job Applicant Testing provision of this policy shall not be employed.

E. Reliability and Fairness Safeguards

1. Pretest Notice

Before requesting an employee or job applicant whose position does not require a commercial driver's license to undergo drug or alcohol testing, The Cooperative shall provide the employee or job applicant with a Pretest Notice in the form of Attachment D to this policy on which to acknowledge that the employee or job applicant has received The Cooperative's drug and alcohol testing policy.

2. Notice of Test Results

Within three (3) working days after receipt of a test result report from the testing laboratory, The Cooperative shall inform in writing an employee or job applicant who has undergone drug or alcohol testing of a negative test result on an initial screening test or of a negative or positive test result on a confirmatory test.

3. Notice of and Right to Test Result Report

Within three (3) working days after receipt of a test result report from the testing laboratory, The Cooperative shall inform in writing, an employee or job applicant who has undergone drug or alcohol testing of the employee or job applicant's right to request and receive from The Cooperative a copy of the test result report on any drug or alcohol test.

4. Notice of and Right to Explain Positive Test Result

- a. If an employee or job applicant has a positive test result on a confirmatory test, The Cooperative shall provide the individual with notice of the test results and, at the same time, written notice of the right to explain the results and to submit additional information.
- b. The Cooperative may request that the employee or job applicant indicate any over-the-counter or prescription medication that the individual is currently taking or has recently taken and any other information relevant to the reliability of, or explanation for, a positive test result.
- c. The employee may present verification of enrollment in the medical cannabis patient registry as part of the employee's explanation.
- d. Use of nonintoxicating cannabinoids or edible cannabinoid products is not a legitimate medical explanation for a confirmed positive test result for marijuana. MROs will verify a drug test confirmed as positive, even if an employee claims to have only used non intoxicating cannabinoids or edible cannabinoid products.
- e. Within three (3) working days after notice of a positive test result on a confirmatory test, an employee or job applicant may submit information (in addition to any information already submitted) to The Cooperative to explain that result.

5. Notice of and Right to Request Confirmatory Retests

- a. If an employee or job applicant has a positive test result on a confirmatory test, The Cooperative shall provide the individual with notice of the test results and, at the same time, written notice of the right to request a confirmatory retest of the original sample at his or her expense.
- b. An employee or job applicant may request a confirmatory retest of the original sample at his or her own expense after notice of a positive test result on a confirmatory test. Within five (5) working days after notice of the confirmatory test result, the employee or job applicant shall notify The Cooperative in writing of his or her intention to obtain a confirmatory retest. Within three (3) working days after receipt of the notice, The Cooperative shall notify the original testing laboratory that the employee or job applicant has requested the laboratory to conduct the confirmatory retest or to transfer the sample to another laboratory licensed under Minnesota Statutes, section 181.953, subdivision 1 to

conduct the confirmatory retest. The original testing laboratory shall ensure that appropriate chain-of-custody procedures are followed during transfer of the sample to the other laboratory. The confirmatory retest must use the same drug or alcohol threshold detection levels as used in the original confirmatory test. If the confirmatory retest does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test may be taken against the employee or job applicant.

6. If an employee or job applicant has a positive test result on a confirmatory test, The Cooperative, at the time of providing notice of the test results, shall also provide written notice to inform the individual of other rights provided under Sections F. or G., below, whichever is applicable.

Attachments E and F to this policy provide the Notices described in Paragraphs 2. through 6. of this Section E.

F. Discharge and Discipline of Employees

1. The Cooperative may not discharge, discipline, discriminate against, request, or require rehabilitation of an employee on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test.
2. In the case of a positive test result on a confirmatory test, the employee shall be subject to discipline which includes, but is not limited to, immediate suspension without pay and immediate discharge, pursuant to the provisions of this policy.
3. The Cooperative may not discharge an employee for whom a positive test result on a confirmatory test was the first such result for the employee on a drug or alcohol test requested by The Cooperative, unless the following conditions have been met:
  - a. The Cooperative has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by The Cooperative after consultation with a certified chemical abuse counselor or a physician trained in the diagnosis and treatment of chemical dependency; and
  - b. The employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its completion or by a positive test result on a confirmatory test after completion of the program.
4. Notwithstanding Paragraph 1., The Cooperative may temporarily suspend the tested employee or transfer that employee to another position at the same rate of pay pending the outcome of the confirmatory test and, if requested, the confirmatory retest, provided The Cooperative believes that it is reasonably necessary to protect the health or safety of the employee, co-employees or the public. An employee who has been suspended without pay must be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative.
5. The Cooperative may not discharge, discipline, discriminate against, request, or require rehabilitation of an employee on the basis of medical history information or the employee's status as a patient enrolled in the medical cannabis registry program revealed to The Cooperative, unless the employee was under an

affirmative duty to provide the information before, upon, or after hire, or failing to do so would violate federal law or regulations or cause The Cooperative to lose money or licensing-related benefit under federal law or regulations.

6. The Cooperative may not discriminate against any employee in termination, discharge, or any term of condition of employment or otherwise penalize an employee based upon an employee registered patient's positive drug test for cannabis components or metabolites, unless the employee used, possessed, or was impaired by medical cannabis on Cooperative property during the hours of employment.
7. An employee must be given access to information in the individual's personnel file relating to positive test result reports and other information acquired in the drug and alcohol testing process and conclusions drawn from and actions taken based on the reports or other acquired information.

G. Withdrawal of Job Offer for an Applicant

If a job applicant has received a job offer made contingent on the applicant's passing drug and alcohol testing, The Cooperative may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test. In the case of a positive test result on a confirmatory test, The Cooperative may withdraw the job offer.

H. Chain-of-Custody Procedures

The Cooperative has established its own reliable chain-of-custody procedures to ensure proper record keeping, handling, labeling, and identification of the samples to be tested. The procedures require the following:

1. Possession of a sample must be traceable to the employee from whom the sample is collected, from the time the sample is collected through the time the sample is delivered to the laboratory;
2. The sample must always be in the possession of, must always be in view of, or must be placed in a secure area by a person authorized to handle the sample;
3. A sample must be accompanied by a written chain-of-custody record; and
4. Individuals relinquishing or accepting possession of the sample must record the time the possession of the sample was transferred and must sign and date the chain-of-custody record at the time of transfer.

I. Privacy, Confidentiality and Privilege Safeguards

1. Privacy Limitations

A laboratory may only disclose to The Cooperative test result data regarding the presence or absence of drugs, alcohol or their metabolites in a sample tested.

2. Confidentiality Limitations

With respect to employees and job applicants, test result reports and other information acquired in the drug or alcohol testing process are private data on individuals as that phrase is defined in Minnesota Statutes Chapter 13, and may not be disclosed by The Cooperative or laboratory to another employer or to a third-party individual, governmental agency, or private organization without the written consent of the employee or job applicant tested.

3. Exceptions to Privacy and Confidentiality Disclosure Limitations

Notwithstanding Paragraphs 1. and 2., evidence of a positive test result on a confirmatory test may be: (1) used in an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under Minnesota Statutes, Chapter 43A or other applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding; (2) disclosed to any federal agency or other unit of the United States government as required under federal law, regulation or order, or in accordance with compliance requirements of a federal government contract; and (3) disclosed to a substance abuse treatment facility for the purpose of evaluation or treatment of the employee.

4. Privilege

Positive test results from The Cooperative drug or alcohol testing program may not be used as evidence in a criminal action against the employee or job applicant tested.

J. Notice of Testing Policy to Affected Employees

The Cooperative shall provide written notice of this drug and alcohol testing policy to all affected employees upon adoption of the policy, to a previously non-affected employee upon transfer to an affected position under the policy, and to a job applicant upon hire and before any testing of the applicant if the job offer is made contingent on the applicant's passing drug and alcohol testing. Affected employees and applicants will acknowledge receipt of this written notice in the form of Attachment G to this policy.

**IV. POSTING**

The Cooperative shall post notice in an appropriate and conspicuous location on its premises that it has adopted a drug and alcohol testing policy and that copies of the policy are available for inspection during regular business hours by its employees or job applicants in its personnel office or other suitable locations.

**Legal References:** Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)  
Minn. Stat. Ch. 43A (State Personnel Management)  
Minn. Stat. § 151.72 (Sale of Certain Cannabinoid Products)  
Minn. Stat. § 152.01 (Definitions)  
Minn. Stat. § 152.22 (Definitions; Medical Cannabis)  
Minn. Stat. § 152.23 (Limitations; Medical Cannabis)  
Minn. Stat. § 152.32 (Protections for Registry Program Participation)  
Minn. Stat. § 176.011, subd. 16 (Definitions; Personal Injury)



Minn. Stat. §§ 181.950-181.957 (Drug and Alcohol Testing in the Workplace)  
Minn. Stat. § 221.031 (Motor Carrier Rules)  
49 U.S.C. § 31306 (Omnibus Transportation Employee Testing Act of 1991)  
49 U.S.C. 31306a (National Clearinghouse for Controlled Substance and Alcohol  
Test Results of Commercial Motor Vehicle Operators)  
49 U.S.C. § 521(b) (Civil and Criminal Penalties for Violations)  
49 C.F.R. Parts 40 and 382 (Department of Transportation Rules Implementing  
Omnibus Transportation Employee Testing Act of 1991)

***Cross-References:*** MSBA/MASA Model Policy 403 (Discipline, Suspension, and Dismissal of School  
District Employees)  
MSBA/MASA Model Policy 406 (Public and Private Personnel Data)  
MSBA/MASA Model Policy 417 (Chemical Use and Abuse)  
MSBA/MASA Model Policy 418 (Drug-Free Workplace/Drug-Free School)